

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7044

Petition of City of Burlington, d/b/a Burlington)
Telecom, for a certificate of public good to)
operate a cable television system in the City of)
Burlington, Vermont (In Re: Petition to amend)
Condition No. 17 of CPG by enlarging the date)
by which Burlington Telecom must complete its)
system build out))

Order entered: 10/13/2009

**PROCEDURAL ORDER RELATED TO AMENDED PETITION OF
BURLINGTON TELECOM AND PENDING PROCEDURAL MOTIONS**

On September 30, 2009, the City of Burlington, d/b/a Burlington Telecom ("Burlington Telecom"), filed an amended petition in this docket. The amended petition enlarges the scope of the relief from certain conditions of its Certificate of Public Good ("CPG") requested by Burlington Telecom. In its original petition filed on September 10, 2008, Burlington Telecom requested an amendment to Condition No. 17 of its CPG related to the completion date of the build-out of its network within the City of Burlington. In its amended petition, Burlington Telecom requests temporary relief from the limitation of Condition No. 60 of its CPG on the manner in which the City of Burlington may finance the operations of Burlington Telecom in order to complete the build-out of its network in a cost-effective manner.

The proposed amendment may affect resolution of several procedural motions pending in this docket, including a motion filed on April 14, 2009, by Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, d/b/a Comcast ("Comcast") to compel Burlington Telecom to respond to twenty-two information requests propounded by Comcast and to one request propounded by the Vermont Department of Public Service ("the Department"). This motion was partially addressed in the Order of April 16, 2009, but on April 30, 2009, Burlington Telecom filed a motion to reconsider the April 16 Order

to the extent that it may have expanded the scope of the current proceeding to matters beyond Condition No. 17. Burlington Telecom also filed on May 1, 2009, a motion for a protective order and a memorandum of law in support of its motion for a protective order and in opposition to Comcast's motion to compel. Comcast filed a response on May 12, 2009. On May 14, 2009, the Department filed a letter in support of Burlington Telecom's position that discovery in the current proceeding be limited for the present to a focus on Condition No. 17.

Burlington Telecom's request in its amended petition that the Board grant Burlington Telecom temporary relief from certain requirements of Condition No. 60, in addition to the requested amendment of Condition No. 17, would appear to broaden the permissible scope of Comcast's discovery related to competitive neutrality even if one were to accept the position of Burlington Telecom and the Department that such discovery should be limited at this time to discovery questions focused on the conditions in the CPG for which relief is sought. At the same time, there is merit in the Department's recommendation that other aspects of competitive neutrality that are not the subject of Burlington Telecom's requested relief might be addressed in a separate and subsequent phase of this docket after the pending requests are resolved. As the Department notes, a narrowly focused proceeding will help facilitate a more timely, efficient, and economic resolution of this matter.

With these considerations in mind, I urge the parties to renew their efforts to resolve outstanding discovery disputes and motions and to reach agreement on a revised schedule for completing this investigation in light of the amended petition, so that this matter may be brought to resolution as quickly and economically as possible. If and to the extent the parties are able to reach agreement on outstanding discovery matters and on a proposed schedule for the remainder of the current proceeding, they should advise the Board to that effect by October 30, 2009. If and to the extent the parties are not able to reach agreement on these matters, Burlington Telecom and Comcast shall each file comments with the Board by October 30, 2009: (i) identifying each discovery issue or request that remains unresolved; (ii) setting forth such party's position in light of the amended petition, as well as the basis for such position, with respect to each such unresolved discovery issue; (iii) briefly describing such party's renewed efforts to resolve such

issues; (iv) recommending a proposed schedule for the remainder of the current proceeding; and (v) identifying any pending motions for which resolution by the Board is still required.

So ORDERED.

Dated at Montpelier, Vermont, this 13th day of October, 2009.

s/John P. Bentley
John P. Bentley, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: October 13, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)